International Brotherhood of Teamsters, Local 222 *and* Emery Mining Corporation and United Mine Workers of America, Local 2176

United Mine Workers of America, Local 2176 *and* Emery Mining Corporation and International Brotherhood of Teamsters, Local 222. Cases 27-CD-219 and 27-CD-220

July 20, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a consolidated proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Emery Mining Corporation, herein called the Employer, against International Brotherhood of Teamsters, Local 222, in Case 27-CD-219, herein called Teamsters Local 222, and against United Mine Workers of America, Local 2176, in Case 27-CD-220, herein called UMWA Local 2176, alleging that said Respondents had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to their respective members rather than to employees represented by the other Respondent labor organization.[1]

Pursuant to notice, a hearing, which opened on December 21, 1981, and closed on January 22, 1982, was held before Hearing Officer Hobart M. Corning. All parties, including UMWA Local 1769 and UMWA Local 1859, appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Utah corporation with its principal offices located in Huntington, Utah, is engaged in the operation of coal mines in Emery County, Utah. During the past calendar year, a representative period, the Employer purchased goods and materials valued in excess of $50,000 directly from points and places located outside the State of Utah. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Teamsters Local 222, UMWA Local 2176, UMWA Local 1769, and UMWA Local 1859, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute involves the hauling of recyclable and nonrecyclable trash from three mine sites—the Wilberg Mine, the Deer Creek Mine, and the Des Bee Dove Mine—operated by the Employer in Emery County, Utah, to various dumping sites located away from the mines.[2]

B. *Background and Facts of the Dispute*

The record reveals that in May 1979, the Employer, an independent contractor, was retained by Utah Power and Light Company, a public utility, to operate the Wilberg Mine, the Deer Creek Mine, and the Des Bee Dove Mine, which were owned by the utility. Prior thereto, American Coal Company, another independent contractor, had operated the Des Bee Dove Mine since it was first acquired by the utility in 1972; and had operated the Deer Creek and Wilberg Mines since they were acquired in 1977. Upon assuming control over the operation of the mines, the Employer adopted the collective-bargaining agreements that American Coal had had with UMWA Locals 2176, 1769, and 1859 covering employees employed at the Wilberg, Deer Creek, and the Des Bee Dove Mines, respectively.

[1] As more fully discussed *infra*, the dispute in this case also involves United Mine Workers of America, Local 1769, herein referred to as UMWA Local 1769, and United Mine Workers of America, Local 1859, herein referred to as UMWA Local 1859. Collectively, UMWA Locals 2176, 1769, and 1859 will be referred to only as UMWA or UMWA Locals.

[2] Additionally, UMWA Local 2176 claims that, at the Wilberg Mine, it should be assigned the work of hauling "gob" which, as defined in the book entitled "Coal Miners' Jargon," revised edition, 1972, appears to be the loose waste in a mine used to fill up mine space from which coal has been removed. Such work is presently being performed at that mine by employees represented by UMWA Local 1902. This work, however, is not being claimed by Teamsters Local 222. Moreover, UMWA Local 1902 is not a party to these proceedings. Consequently, we find that the work in dispute involves only the hauling of trash from the three mines.

The history of the work in dispute varies from one mine to the other. Thus, the record reveals that at the Deer Creek Mine the job of hauling trash was, in 1975, initially subcontracted to a mine employee, Lamont Palmer, by the mine's operator, Peabody Coal Company. Under that agreement, Palmer, during his nonworking hours and utilizing his own equipment, would haul trash from the mine to a dumping site located off the mine property, for which he was separately paid on a per-load basis by Peabody Coal.

In February 1976, the trash-hauling service at the Deer Creek Mine was assigned to another mine employee, Wayne Douglas, at the latter's request, after Palmer decided to terminate his business.[3] Like Palmer, Douglas used his own equipment on his own time[4] and was separately paid on a per-load basis for hauling trash. As a mine employee, Douglas, like Palmer, was represented by UMWA Local 1769.

When American Coal took over operation of the Deer Creek Mine in 1977, it subcontracted the disputed work at that mine to a private firm, American Kinfolk. American Kinfolk, in turn, hired Douglas as an independent contractor to continue hauling trash from the mine.[5] In that capacity, Douglas was paid by American Kinfolk $21 to $22 per haul while utilizing his own equipment.

When the Employer assumed operation of the Deer Creek Mine in May 1979, Douglas continued to haul trash until December 1979, at which time American Kinfolk was replaced by the Employer with another firm, Ashworth Trucking, Inc. (hereinafter Ashworth), whose employees were represented by Teamsters Local 222.

At the Wilberg Mine, which opened in 1974, the job of hauling trash was initially subcontracted to a mine employee, Vaughn Frandsen, by the mine's operator, Peabody Coal. Like Palmer and Douglas, Frandsen was separately compensated by Peabody Coal on a per-load basis for hauling trash, on his own time and with his own equipment, from the minesite to his property. Frandsen retained salvageable rights to the trash. When American Coal took over operation of the mine in 1977, Frandsen chose not to continue hauling trash and, consequently, the work was subcontracted to American Kinfolk. Thereafter, utilizing its own equipment and employees, American Kinfolk continued to haul trash from the Wilberg Mine to its own landfill until December 1979, when the Employer herein subcontracted that work to Ashworth.

At the Des Bee Dove Mine, the history of the disputed work differed from that of the other two mines. Thus, before the mine was organized by UMWA Local 1859 in 1972, all the trash-hauling work was performed by American Kinfolk. However, in 1972, pursuant to a grievance filed by UMWA Local 1859, American Coal, which then operated the mine, assigned to employees represented by that Local the work of hauling trash from the mine to a specific location outside the mine[6] where it was then picked up and hauled away by employees of American Kinfolk.[7] Sometime in 1978, when American Coal no longer engaged in the coal-hauling operation at the mine and had ceased to maintain a fleet of trucks and drivers, American Kinfolk resumed full trash-hauling services at the Des Bee Dove Mine.[8] In December 1979, the Employer subcontracted the disputed work at the Des Bee Dove Mine to Ashworth.

The dispute in the instant case arose when, in January 1980, UMWA Local 1769 filed a grievance on behalf of Douglas concerning the Employer's decision to subcontract the trash-hauling work at the Deer Creek Mine to Ashworth. Pursuant to that grievance, an arbitration hearing was held on May 21, attended only by the Employer and UMWA Local 1769.[9] On June 6, 1980, the arbitrator issued his decision finding that, under the terms of the parties' collective-bargaining agreement,[10]

[3] It appears that Palmer became a supervisor and ceased to be a member of UMWA Local 1769 in 1976.

[4] The record reveals that Douglas did, on very rare occasions, haul trash during his regular mine working hours.

[5] American Kinfolk also employed part-time drivers who held full-time positions at the mines and who, as mine workers, were represented by the corresponding UMWA Local Union. However, in their capacity as employees of American Kinfolk, these part-time drivers were not represented by any labor organization. Further, American Kinfolk employed persons who worked for other companies and were not represented by any union.

[6] Prior to 1978, American Coal had maintained its own fleet of trucks and drivers which it used, pursuant to a separate coal-hauling agreement with Utah Power and Light Company, to haul and transport coal from the mine. It was these trucks and drivers that were used by American Coal to haul trash from the minesite to where it was picked up by American Kinfolk. However, in 1978, the coal-hauling operation was contracted to another firm, Western Coal Carrier, whose employees were represented by UMWA Local 1902. Western Coal Carrier and, as noted, UMWA Local 1902 are not parties to these proceedings.

[7] It appears from the record that occasionally one Val Jensen, an independent contractor, also hauled trash from the mine.

[8] American Kinfolk also hired, on a part-time basis, some of Western Coal's employees.

[9] Teamsters Local 222 was neither a party to, nor given the opportunity to participate in, the grievance arbitration proceedings. Indeed, the record reveals that Teamsters Local 222 first learned of the proceedings in October or November 1981.

[10] The arbitrator found that the work in dispute was covered by the following work-jurisdiction clause in the contract:

> The production of coal, including removal of over burden and coal waste, preparation, processing and cleaning of coal (except by water way or rail not owned by employer), repair and maintenance work normally performed at the mine site or at the central shop of the employer and maintenance of gob piles and mine roads, and work customarily related to all of the above shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this agreement.

the job of hauling trash from the Deer Creek Mine fell within the jurisdiction of UMWA Local 1769. The arbitrator's decision was appealed by the Employer to an arbitration review board which had been established under the existing collective-bargaining agreement. Prior to a review of that appeal, a new collective-bargaining agreement was entered into by the parties which eliminated the arbitration review board. Consequently, the Employer's appeal was never heard.[11]

The Employer's industrial relations director, Wayne Jensen, testified that sometime in November 1981 he was informed by Tom Wattington, the vice president of the Bituminous Coal Operators Association,[12] that he (Wattington) had been pressured by the United Mine Workers Association in Washington, D.C., and that, unless the arbitrator's award was implemented, there would very likely be strikes. Thereafter, on November 16, 1981, representatives of the Employer and of UMWA Locals 1769, 1859, and 2176 met to discuss, *inter alia*, the rumors that had been circulating concerning a possible strike. According to the Employer's administrative assistant for labor relations, Gary Robinson, during that meeting UMWA Local 2176's representative, Bob Positano, suggested that, in order to prevent a strike, the Employer should implement the arbitrator's award on an interim basis and that another grievance should be filed concerning the disputed work at the Wilberg Mine which would be promptly processed and arbitrated and would be binding at all three mines.[13]

By letter dated November 17, 1981, the Employer, through its attorney, notified the Teamsters attorney of the rumored UMWA strike and further advised him that the Employer was considering implementing the arbitrator's award at the Deer Creek Mine on an interim basis. Having been notified of the Employer's decision to implement the award, the Teamsters' secretary-treasurer, Grant Haslam, on November 18, ordered a picket line set up at the Employer's headquarters in Huntington, Utah. Further, at a meeting held that same day, the Teamsters president, John Parham, informed Robinson that if the arbitrator's award were to be implemented, the picketing would be extended to the three mines.[14]

Also on November 18, Robinson, verbally and in writing, informed UMWA District 22's vice president, Mike Dalpiaz, that, in order to avert a possible work stoppage, the Employer was willing to temporarily implement the arbitrator's award as long as it did not prejudice the Employer's position in the court proceeding. Dalpiaz responded that the Mine Workers had not threatened any work stoppage and that they were in full agreement with the Employer's decision to implement the award. However, on November 19, before the Employer had received Dalpiaz' response, a work stoppage occurred at the Wilberg Mine which lasted for 1 day. As a result of the work stoppage, the Employer immediately withdrew its offer to implement the award. While UMWA officials disclaimed any responsibility for the work stoppage, Jensen testified, without contradiction, that, when he asked the UMWA Local 2176 president, Don Cologie, and mine committeeman, Steve Balog, why the work stoppage had occurred, they responded that it was because of the Employer's failure to implement the arbitrator's award at the Deer Creek Mine. For the moment, the disputed work at the Deer Creek Mine, according to the Employer's brief to the Board, is not being performed by members of any of the competing Unions.

C. *Contentions of the Parties*

The Employer and Teamsters Local 222 contend that a jurisdictional dispute exists and that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Further, they contend that the disputed work should be assigned to employees represented by Teamsters Local 222 and that such an assignment is warranted on the basis of the Employer's preference, employer and area practice, economy and efficiency of operations, and the relative skills involved.

UMWA, however, contends that no real jurisdictional dispute exists since the evidence purportedly failed to establish that "UMWA people" were involved in the November 19 work stoppage at the Wilberg Mine and since, in UMWA's view, the picketing engaged in by Teamsters Local 222 was contrived by the Employer and the Teamsters so as to afford the Board jurisdiction over this matter. Additionally, UMWA appears to contend that this dispute is not cognizable under Section 8(b)(4)(D)

[11] The Employer also filed a charge alleging a violation of Sec. 8(e) of the Act which was subsequently dismissed by the Board. UMWA Local 1769 thereafter filed a suit in a Federal district court to enforce the arbitrator's award but those proceedings were stayed pending the Board's decision in this case.

[12] The Employer was a member of the Bituminous Coal Operators Association until it withdrew from that association in early 1981. The Employer's withdrawal from the association is presently the subject of an unfair labor practice charge with the Board.

[13] In fact, a similar grievance was filed by UMWA Local 1859 concerning the disputed work at the Des Bee Dove Mine. Likewise, a grievance had also been filed by UMWA Local 2187 at the Wilberg Mine concerning the same issue but was held in abeyance pending the outcome of the arbitrator's decision, as was the grievance filed by UMWA Local 1859.

[14] Although it is unclear from the record whether the Teamsters strike lasted 3 or 10 days, it is clear that the picket line was removed at the Board's request.

because the Teamsters "are not signatory to a contract with [the Employer]" but rather represents employees of a different employer, Ashworth, and because the issue purportedly involves only an interpretation of the contract between the Employer and UMWA Local 1769. UMWA further contends that the 8(a)(5) charge pending against the Employer constitutes a bar to these proceedings and that the arbitration award constitutes a defense to the 8(b)(4)(D) charge. Consequently, UMWA moves to quash these proceedings. On the merits, UMWA claims that the work in dispute should be assigned to employees represented by them on the basis of the arbitrator's decision and the Employer's past practice.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

The record in the instant case clearly establishes that, when the Employer announced its intent to temporarily assign the disputed work to employees represented by the UMWA Locals, Teamsters Local 222 immediately began picketing the Employer's headquarters and also threatened to picket all three of the mines if the Employer were to implement its decision. While asserting that the picketing by the Teamsters was contrived, UMWA has presented no evidence in support of that assertion. Further, the evidence strongly suggests that the Teamsters' actions were legitimately precipitated by the Employer's sudden decision to reassign the disputed work which its members had been performing to employees represented by the UMWA Locals. Under these circumstances, we find that the Teamsters picketing of the Employer's headquarters and its threat to picket all three mines were not, as alleged by UMWA, contrived.

As noted above, the record further establishes that, on November 19, the Employer's employees at the Wilberg Mine engaged in a work stoppage. Although UMWA claims that there is no evidence to show that "UMWA people were in fact involved in that activity," the record clearly establishes that the Employer was advised by UMWA officials that the work stoppage was caused by the Employer's refusal to assign the work in dispute at the Deer Creek Mine to employees represented by UMWA Local 1769. Additionally, Jensen testified, without contradiction, that UMWA officials had assured the Employer that the work stoppage would cease by the afternoon shift. On the basis of the above facts, we are persuaded that the work stoppage did involve UMWA members and further are convinced, in view of the earlier strike threats, that UMWA officials knew of the upcoming work stoppage and made no real effort to prevent it. Accordingly, UMWA's contention that "UMWA people" were not involved in the work stoppage is without merit.

In light of the above facts and the record as a whole, we find that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated.[15]

We also find without merit UMWA's contention that this dispute is not one cognizable under Section 8(b)(4)(D) because Teamsters Local 222 represents employees of a different employer and has no contractual relationship with the Employer herein. The Board has held that the "applicability of Section 8(b)(4)(D) is not limited to competing groups of employees working for the same employer, but also extends to an attempt . . . to force the indirect assignment of work from employees of one employer to employees of another."[16] "The critical issue to be determined under this section of the Act is the legality of a respondent union's attempt to force 'any' employer, whether or not it is the employer employing either contending group of employees, to assign the disputed work to its members rather than to another group of employees."[17]

Finally, contrary to UMWA's contention, the issue here does not involve the mere interpretation of a contract but rather concerns an actual dispute between two competing unions vying for the same work. Nor do we agree that these proceedings are barred by the 8(a)(5) charge pending before the Board. That charge relates only to the Employer's alleged untimely withdrawal from the Bituminous Coal Operators Association and has no bearing

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[15] UMWA claims that if jurisdiction over this dispute is premised on the work stoppage by UMWA members at the Wilberg Mine, then proper parties, i.e., UMWA Local 1902, have not been included in these proceedings since, as noted earlier, the work in dispute in their view encompasses "gob-hauling" which is presently performed by UMWA Local 1902 members. It is evident from the above facts that both UMWA and Teamsters Local 222 engaged in conduct proscribed by Sec. 8(b)(4)(D) of the Act and, consequently, the Board's jurisdiction over the matter is obtained by virtue of the conduct of either of the competing unions. Further, the work stoppage at the Wilberg Mine resulted from the Employer's failure to implement the arbitrator's decision which related solely to the hauling of trash and was not directed towards UMWA Local 1902's performance of the gob-hauling work. Moreover, as noted earlier, Teamsters Local 222 does not claim the right to haul "gob" from the mines. It is therefore apparent that, as we have found, the instant dispute does not involve UMWA Local 1902 and that the latter is not a proper party to these proceedings.

[16] *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electrical Company, Inc.)*, 141 NLRB 888, 894 (1963).

[17] *Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Emery Air Freight Corporation)*, 255 NLRB 1091 (1981).

whatsoever on the question of which of the two competing Unions is entitled to perform the work in dispute. In view of the above, we find that the instant dispute is one cognizable under Section 8(b)(4)(D) of the Act.

We further find that there is no agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound. The only evidence remotely suggesting the existence of an agreed-upon method for the voluntary adjustment of this dispute is the arbitration proceeding, undertaken pursuant to the collective-bargaining agreement between the Employer and UMWA Local 1769. However, since Teamsters Local 222 is not a party to that agreement and was not advised of nor given the opportunity to participate in the arbitration proceedings, there is no agreed-upon method for the resolution of this dispute binding upon all the parties to the dispute. Accordingly, we find that this dispute is properly before the Board for determination.[18]

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[19] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors in a particular case.[20]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

The Employer does not have a collective-bargaining agreement with Teamsters Local 222. It does, however, have separate agreements with the UMWA Locals covering employees at all three mines. While these agreements contain jurisdictional clauses (see fn. 9, *supra*) which describe the work to be performed by UMWA members, these clauses make no mention of the work in dispute here.

The UMWA Locals contend that the work in dispute is encompassed within the phrase "work customarily related to all of the above" found in the jurisdictional clause. However, that phrase is too vague and ambiguous to warrant a finding that it covers the disputed work. Under UMWA's interpretation of that phrase, any work, no matter how remote, which comes into contact with work performed by employees covered by that contract, would *ipso facto* be construed as falling within UMWA's jurisdiction. That is far too great a reach for a phrase susceptible, by virtue of the vagueness of its language, of either a broad or narrow construction, including one which would exclude the disputed work (for example, to work limited to the minesite). Under these circumstances, we find UMWA's contention to be unpersuasive.

As Teamsters Local 222 does not have a collective-bargaining agreement with the Employer, and as the Employer's agreements with the UMWA Locals do not cover the work in dispute, we find that this factor does not favor an award of the disputed work to employees represented by the Teamsters Local 222 or by the UMWA Locals.

2. Arbitration award

As previously indicated, UMWA Local 1769 filed a grievance against the Employer over the disputed work at the Deer Creek Mine and the arbitrator found that, under the Employer's agreement with UMWA Local 1769, the employees represented by that Local were entitled to perform the work. However, Teamsters Local 222 had no knowledge of, did not participate in, and did not agree to be bound by the arbitrator's decision. Furthermore, in reaching his decision, the arbitrator focused solely on the language of the subject contract and did not consider any of the factors that the Board might consider relevant if it were called upon to resolve the work dispute. Finally, we note that, while the work in dispute involves all three mines, the arbitrator's award was directed only to the disputed work at the Deer Creek Mine. Accordingly, for the above-stated reasons, we decline to give controlling weight to that award.[21]

3. Employer and area practice

The UMWA Locals contend that the disputed work at the mines has always been performed by employees represented by them. The record, however, clearly establishes that the Employer's past practice, with one brief exception,[22] has been to subcontract the disputed work either to a private firm or to an individual employed at the mine. Although the individuals hired by the Employer to haul trash from the mines were, as employees of the mine, represented by their respective UMWA Local, their performance of the disputed work was

[18] In light of our findings herein, UMWA's motion to quash these proceedings is hereby denied.

[19] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[20] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[21] *International Brotherhood of Electrical Workers, AFL-CIO, Local 104 (Standard Sign & Signal Co., Inc.)*, 248 NLRB 1144 (1980).

[22] For a brief period of time part of the disputed work at the Des Bee Dove Mine was assigned to employees represented by UMWA Local 1859.

undertaken not as employees of the mine but as private subcontractors or employees of private subcontractors. Thus, with the exception of an unspecified but short period of time at the Des Bee Dove Mine, the Employer has never assigned the disputed work to employees represented by either the UMWA Locals or the Teamsters Local 222. Consequently, we find that this factor favors neither group of employees.

However, it is undisputed that within the Carbon-Emery area, which is the name of the geographic locality wherein the three mines are situated, the trash-hauling work at most of the mines located therein is performed by employees represented by Teamsters Local 222. In this regard, it is significant to note that, according to Dalpiaz' testimony, not a single UMWA-represented employee within the Carbon-Emery area performs the disputed work as part of his normal employment. In view of the above, we find that the factor of area practice favors an award of the disputed work to employees represented by Teamsters Local 222.

4. Employee skills

The evidence clearly establishes that both groups of employees possess the requisite skills to perform the work in dispute. Thus, the Employer's employees represented by UMWA Locals had, in their capacity as subcontractors or employees of subcontractors, performed the disputed work prior to it being contracted out to Ashworth. Nor is it disputed that employees represented by Teamsters Local 222 are capable of performing the work. Accordingly, we find that this factor favors both equally.

5. Economy and efficiency of operations

The Employer asserts that the assignment of the disputed work to employees represented by the UMWA Locals would result in its incurring a substantial and unnecessary expense. Thus, it points out that in order for it to implement its own trash-hauling operation at the three mines, it would have to purchase three trucks at a total cost of approximately $270,000. It notes that, because of the UMWA Locals' refusal to cross into each other's jurisdiction, each mine would be required to have its own truck. In addition to the initial cost of the trucks, maintenance and other operating costs make the performance of the disputed work by UMWA-represented employees highly uneconomical. Further, the undisputed evidence reveals that, because of their limited use, the trucks would be idle for approximately 22 or more hours per day. In contrast, it notes that Ashworth, for a flat rate per load, provides its own trucks and drivers and utilizes its own dumpsite when performing the disputed work.

While contending that it would be more economical for the Employer's own employees represented by the UMWA Locals to perform the disputed work, the UMWA Locals presented scant evidence in support thereof and have not refuted the Employer's contentions to the contrary. Thus, we find that the factors of economy and efficiency of operation favor awarding the work in dispute to employees represented by Teamsters Local 222.

6. Employer preference

The Employer has stated that it prefers to have the work performed by Ashworth whose employees are represented by Teamsters Local 222. Its preference is based on the fact that it is more economical and efficient to have Ashworth's employees perform the disputed work and further is consistent with the practice in the area. Thus, while this factor is not controlling, it favors an award of the disputed work to employees represented by Teamsters Local 222.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by International Brotherhood of Teamsters, Local 222, are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's assignment of the disputed work to Ashworth's employees represented by Teamsters Local 222, the fact that this assignment is consistent with area practice, and the efficiency and economy of operations that result from such an assignment. In making this determination, we are awarding the work in question to employees who are represented by Teamsters Local 222, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Ashworth Trucking, Inc., who are represented by International Brotherhood of Teamsters, Local 222, are entitled to perform the hauling of recyclable and nonrecyclable trash from the Wilberg Mine, the Deer Creek Mine, and the

Des Bee Dove Mine operated by Emery Mining Corporation in Emery County, Utah.[23]

2. United Mine Workers of America, Locals 2176, 1769, and 1859, are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Emery Mining Corporation to assign the disputed work to employees represented by those labor organizations.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Mine Workers of America, Locals 2176, 1769, and 1859, shall notify the Regional Director for Region 27, in writing, whether or not they will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.

[23] In view of our determination herein, the charge in Case 27-CD-219 against International Brotherhood of Teamsters, Local 222, is hereby dismissed.